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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,404	12/05/2003	Joseph A. Orr	01-40 D1	9584

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EXAMINER

JENKINS, JERMAINE L

ART UNIT PAPER NUMBER

2855

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/729,404	ORR ET AL.	
	Examiner	Art Unit	
	Jermaine Jenkins	2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-64 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 51-54, 56-59 and 61-64 is/are rejected.
- 7) ☒ Claim(s) 55 and 60 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12052003</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 51-54, 56-59 & 60-63 are rejected under 35 U.S.C. 102(e) as being anticipated by Jones et al (6,585,662).

In regards to claim 51, Jones et al teaches a pneumotachmeter (10) having a first housing (12) having a first end configured to be coupled to a respiratory conduit and a second end configured to be coupled to the respiratory conduit, a primary conduit (chambers 24 & 26 are being interpreted as a conduit) defined in the first housing and including a flow restricting portion (20); a first pressure port (inlet 14 is being interpreted as a port) defined in the first housing in fluid communication with the primary conduit on a first side of the flow restricting portion (20); a second pressure port (outlet 18 is being interpreted as a port) defined in the first housing in fluid communication with the primary conduit (24 & 26) on a second side of the flow restricting portion (20) (Column 3, line 66-Column 4, lines 7; See Figures 1 & 5); and a pressure transducer (276) coupling portion disposed on the first housing (12) and configured to selectively and removably engage a second housing of a pressure transducer (276) (Column 4, lines 21-27).

With respect to claims 52, 61 & 62, Jones et al teaches the first pressure port (166) includes a first opening and the second pressure port (166) includes a second opening, and

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the first opening and a second sealing member (160) covering the second opening (Column 7, line 62-Column 8, line 1; See Figure 9).

With respect to claim 53, Jones et al teaches a first hollow protruding portion (64) extending from the first housing (12) at the first pressure port and a second hollow protruding portion (64) extending from the first housing at the second pressure port (Column 6, lines 27-39; See Figures 5A & 5B).

With respect to claims 54, 58 & 63, Jones et al teaches wherein the first hollow protruding portion (64) includes a first piercing portion (lip 60 is being interpreted as a piercing portion) disposed at an end thereof, and wherein the second hollow protruding portion (64) includes a second piercing portion (60) disposed at an end thereof (Column 6, lines 27-39; See Figures 5A & 5B).

With respect to claims 56 & 57, Jones et al teaches a differential pressure sensing device having a pressure transducer (276) comprising a transducer housing (12), (b) a coupling portion (See Figure 5A & 5B) disposed on the transducer housing (12) and configured to selectively and removably attach to a pneumotach housing (Column 4, lines 17-27), (c) a first pressure sensor (resistive element 20 is being read pressure sensor) disposed in the transducer housing (12), (d) a first sample conduit (inlet chamber 24 is being interpreted conduit) that includes a first portion (5A & 5B) disposed in the transducer housing (12) and coupled to the first pressure sensor (20) and a second portion adapted to cooperate with a first pressure port (14) on a pneumotach responsive to the transducer housing (12) being coupled to such a pneumotach housing, and a second sample conduit (outlet chamber 26 is being interpreted conduit) that includes a first portion (5A & 5B) disposed in the transducer housing (12) and coupled to the first pressure

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sensor (20) and a second portion adapted to cooperate with a second pressure port (18) on a pneumotach responsive to the transducer housing (12) being coupled to such a pneumotach housing (Column 6, lines 15-57; See Figure 5).

With respect to claim 59, Jones et al teaches the first pressure sensor (20) comprises a differential pressure sensor in communication with the first and second sample conduits (24, 26) (See Figure 5).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 64 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al (6,585,662) in view of Abrams (5,098,384).

With respect to claim 64, Jones et al teaches the claimed invention except for a first valve disposed in the first sample conduit and a second valve disposed in the second sample conduit.

Abrams teaches a pressure monitoring system having a first valve (48, being read as a stop cock) disposed in the first sample conduit (46, being read as a tube), and a second valve (56) disposed in the second sample conduit (53) (Column 2, lines 7-9; Column 5, line 29-Column 6, line 12; See Figure 2). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the concept of two valves with corresponding conduits as taught by Abrams in the pressure sensing device of Jones et al for the

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purpose of maximizing user control for regulating the fluid flow in the system (Abrams; Column 4, line 66-Column 5, line 1).

Allowable Subject Matter

5. Claims 55 & 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermaine Jenkins whose telephone number is 571-272-2179. The examiner can normally be reached on Monday-Friday 8am-430pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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